

29341. Misbranding of canned cherries. U. S. v. 100 Cases and 17% Cases of Canned Cherries. Decree of condemnation. Product released under bond to be relabeled. (F. & D. Nos. 42460, 42956. Sample Nos. 18766-D, 20009-D.)

This product was substandard because of the presence of excessive pits and because it was packed in water, and it was not labeled to indicate that it was substandard. The labels of a portion failed to bear a correct statement of the quantity of contents since the weight declared was that of the drained weight of the fruit and not of the entire contents.

On May 24 and June 17, 1938, the United States attorney for the Southern District of California, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 117% cases of canned cherries at Los Angeles, Calif.; alleging that a portion had been shipped in interstate commerce on or about May 5, 1938, by C. S. Kale Canning Co. from Bellingham, Wash., that the remainder had been packed by the C. S. Kale Canning Co., and had been shipped by Burrington, Case & Gibson, from Seattle, Wash.; and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Bakers Delight Brand * * * Interstate Wholesale Grocery Co. Distributors Red Sour Pitted Cherries Net Contents—4 lbs. 10 Ozs."

A portion was alleged to be misbranded in that the statement "Net Contents 4 lbs. 10 Ozs." was false and misleading and tended to deceive and mislead the purchaser since it did not state the food contents but stated only the drained net weight of the fruit; and in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package. The article in both lots was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, since there was present more than one cherry pit per 20 ounces of net contents and it was packed in water, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary indicating that it fell below such standard.

On July 14, 1938, the cases having been consolidated and C. S. Kale Canning Co., claimant, having admitted the allegations of the libels, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled under the supervision of this Department.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

29342. Adulteration of cheese. U. S. v. 34 Boxes of Longhorn Cheddar Cheese. Product released under bond to be reconditioned. (F. & D. No. 43188. Sample No. 30424-D.)

A portion of this product was infested with mites.

On August 2, 1938, the United States attorney for the District of Utah, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 34 boxes of cheese at Salt Lake City, Utah; alleging that the article had been shipped in interstate commerce on or about July 6, 1938, by Gold Medal Dairies from Missoula, Mont.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled: "From Gold Label Dairies, Missoula, Montana."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On August 16, 1938, Gold Medal Dairies, having appeared as claimant, judgment was entered ordering that the product be released under bond conditioned that it be properly reconditioned under the supervision of this Department. The product was reconditioned by eliminating therefrom all objectionable material.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

29343. Misbranding of Biolac. U. S. v. 633 Cases of Biolac. Consent decree of condemnation. Product released under bond conditioned that it be relabeled and donated to hospitals. (F. & D. No. 42438. Sample No. 17252-D.)

This product was short of the declared volume.

On May 23, 1938, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 633 cases, each containing 12 cans of Biolac, at Washington, D. C.; alleging that the article had been shipped in interstate commerce on or about March 25, 1938, by the Borden Co. from

Lewisburg, Tenn.; and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "1 Pint (16 Fl. Oz.) Net 17½ oz. Avoir. Biolac A Milk Food * * * Manufactured by The Borden Company New York—Chicago—San Francisco."

It was alleged to be misbranded in that the statement "1 pint (16 Fl. Oz.);" was false and misleading and tended to deceive and mislead the purchaser since it was short volume; and in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package since the quantity stated was not correct.

On June 1, 1938, the Borden Co., claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be relabeled "For Hospital use only—not for sale" and be donated to hospitals.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

29344. Misbranding of canned tomatoes. U. S. v. 289 Cases of Tomatoes. Default decree of condemnation. Product delivered to a charitable organization. (F. & D. No. 42268. Sample No. 4541-D.)

This product was substandard because of the presence of excessive peel, and it was not labeled to indicate that it was substandard.

On April 28, 1938, the United States attorney for the District of North Dakota, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 289 cases of canned tomatoes at Bismark, S. Dak.; alleging that the article had been shipped in interstate commerce on or about August 25, 1937, by A. W. Sisk & Son from Trappe, Md.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Pine Cone Brand Tomatoes * * * Albert W. Sisk and Son Distributors."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the tomatoes were unpeeled and the cans did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On July 27, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered turned over to a charitable organization.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

29345. Adulteration and misbranding of vanilla and lemon extracts and Arovanilla. U. S. v. 30 Dozen Bottles of Vanilla Extract and 17 Dozen Bottles of Lemon Extract (and 1 similar seizure action). Default decree of condemnation and destruction. (F. & D. Nos. 41638, 41639, 41641. Sample Nos. 1329-D, 1330-D, 1331-D.)

These cases involved so-called vanilla and lemon extracts which consisted of imitation extracts, the former containing diethylene glycol, a poison, and the latter possessing about one-half the flavoring strength of lemon extract; also an imitation vanilla extract designated "Arovanilla," which contained diethylene glycol.

On or about February 9 and 11, 1938, the United States attorney for the Southern District of West Virginia, acting upon reports by the Secretary of Agriculture, filed in the district court two libels praying seizure and condemnation of 30 dozen bottles of vanilla extract and 17 dozen bottles of lemon extract at Barnabus, W. Va., and one barrel of Arovanilla at Mabscott, W. Va.; alleging that the articles had been shipped in interstate commerce on or about November 6, 1937, and January 3 and 14, 1938, from Norfolk, Va., by Interstate Manufacturing Co.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part: "Fine's Eagle Brand Pure Vanilla [or "Lemon"] Extract * * * Bottled By Interstate Mfg. Co., Norfolk, Va."; or "Arovanilla * * * Mfd. By The Interstate Mfg. Co., Norfolk, Va."

Adulteration was alleged in that an imitation vanilla containing a poisonous substance, a glycol, had been substituted in whole or in part for pure vanilla extract; in that an imitation lemon extract deficient in citral content had been substituted in whole or in part for pure lemon extract; and in that an imitation vanilla flavor containing a poisonous substance, a glycol, had been substituted for Arovanilla, a food flavor. The vanilla and lemon extracts were alleged to be adulterated further in that they had been mixed and colored in a manner whereby inferiority was concealed.